

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 32468 of 2004(M)

PETITIONER:

**K.T. JOSE, RETD. ARMY PENSIONER,
KANNAMPUZHA HOUSE,
P.O. VADAKKANACHERRY, THRISSUR DISTRICT.**

**BY ADV. SRI.D.KRISHNA PRASAD,
SRI.D.NARENDRANATH,
SRI.M.HARISHARMA,
SRI.T.P.ELDHOSE.**

RESPONDENTS:

- 1. THE CHIEF CONTROLLER OF DEFENCE
ACCOUNTS (P), ALLAHABAD.**
- 2. THE SENIOR RECORD OFFICER,
OIC RECORDS, ABHILEKH BENGAL,
ABHIYANTA SAMOOH, BENGAL ENGINEER GROUP
RECORDS, ROORKEE-247 667.**
- 3. UNION OF INDIA, REPRESENTED BY ITS
SECRETARY, MINISTRY OF DEFENCE
SENA BHAVAN, NEW DELHI.**

**BY ADV. SRI. AJITH KRISHNAN, ADDL.CGSC,
ADV. SRI. P. PARAMESWARAN NAIR, ASST. SOLICITOR GENERAL.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE LETTER DTD. 08/05/2004 NO. PEN/R-4675/RSMB/R ISSUED BY THE R.2.

EXT.P.2: COPY OF THE PETITION DTD. 27/05/2004 SUBMITTED BY THE PETITIONER BEFORE THE R.3.

RESPONDENT'S EXHIBITS:

EXT.R2.A: COPY OF THE LETTER GRANTING DISABILITY PENSION FOR THE RANK OF JCO VIDE PCIDA (P) ALLAHABAD PPO NO. D/459/99.

EXT.R2.B: COPY OF THE AF MSF - 17 DTD. 15/04/2002.

EXT.R2.C: COPY OF THE OFFICE LETTER NO. PEN/R-4675/RSMB/R DTD. 03/01/2003.

EXT.R2.D: COPY OF THE PPO NO. D/RA/2442/2003 ISSUED BY THE OFFICE OF THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS), ALLAHABAD.

EXT.R2.E: COPY OF THE OFFICE LETTER NO. PEN/R-4675/RSMB/R, DTD. 24/05/2003.

EXT.R2.F: COPY OF THE MEDICAL BOARD PROCEEDINGS IN AF MSF - 17 DTD. 15/04/2002.

EXT.R2.G: COPY OF THE INDIVIDUAL INFORMATION FOR GRANT OF DISABILITY PENSION VIDE OFFICE LETTER NO. PEN/R-4675/RSMB/R DTD. 08 MAY - 2004.

EXT.R2.H: COPY OF THE OFFICE LETTER NO. PEN/R-4675/RSMB/1R, DTD. 14/08/2003.

EXT.R2.I: COPY OF THE OFFICE LETTER NO. PEN/R-4675/RSMB/R, DTD. 18/03/2004.

EXT.R2.J: COPY OF THE OFFICE LETTER NO. PEN/R-4675/RSMB/1R, DTD. 08/05/2004.

EXT.R2.K: COPY OF THE OFFICE LETTER NO. PEN/R-4675/RSMB/1 R, DTD. 15/06/2004.

//TRUE COPY//

prv.

KURIAN JOSEPH, J.

W.P(C)No. 32468 of 2004

Dated this the 14th day of June, 2007

JUDGMENT

Petitioner is aggrieved by Ext.P1 communication whereby the disability element of pension has been reduced from 30% to 20% with effect from 13-4-2002. It is stated in the counter affidavit that such reduction is based on Ext.R2(b). There is no dispute that the petitioner has been suffering from Chronic Duodenal Ulcer (Old) V-ST. A perusal of Ext.R2(b) would show that the petitioner patient is 64 years old, the condition is static and that condition is Chronic Duodenal Ulcer. If the situation of Chronic Duodenal Ulcer remains to be static as per the report dated 15-4-2002, there is no justification in arbitrarily reducing the disability element from 30% to 20%. There is no material for such reduction. On the contrary the only material produced along with the counter affidavit would show that the petitioner is entitled to have the disability element continued at 30%. Therefore, Ext.P1 is quashed. The petitioner shall be entitled to have the disability element in the pension at the rate of 30%

unless the same is duly varied on the basis of a fresh re-survey report. The arrears due to the petitioner in the light of the above declaration shall be disbursed within a period of three months from the date of production of a copy of the judgment, if not, the petitioner shall be entitled to interest at the rate of 12% from the date of judgment.

The writ petition is disposed of as above.

(KURIAN JOSEPH, JUDGE)

ahg.